

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

FC 2008-090358

01/14/2010

HONORABLE JAMES P. BEENE

CLERK OF THE COURT

K. Alger

Deputy

IN RE THE MARRIAGE OF  
JEFF COLLINS

ZUBAIR ASLAMY

AND

RICHELLE COLLINS

SONYA E UNDERWOOD

**ORDER**

On July 29, 2009, Petitioner/Father filed a petition to modify parenting time. On September 29, 2009, Respondent/Mother filed a response to Father's petition to modify parenting time. On November 3, 2009, Father filed a motion for leave to amend petition to modify parenting time. On November 12, 2009, Mother filed a response to Father's motion for leave to amend petition to modify parenting time. On December 14, 2009, the Court held an evidentiary hearing on Father's petitions. Mother, Father, Marge Collins (Father's mother), Officer Dave Bauer, and Deputy Joseph Eversole testified at the hearing. Based on the evidence and testimony presented at the hearing, the Court enters the following orders.

**PARENTING TIME**

At the hearing, Father requested that the Court modify the parenting time schedule and order that the parties use an alternate a week on/week off parenting time schedule. In the alternative, Father requested that he have parenting time with the minor child every other weekend from Friday at 5:00 p.m. until Sunday at 6:00 p.m. and one weekday evening every week from 5:00 p.m. until 8:00 p.m. Mother requested that the Court deny Father's petition to modify parenting time and leave the current parenting time order unchanged.

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In the parties' May 7, 2009 decree of dissolution it states, in regards to the parenting time schedule:

The parties agree that the aforementioned parenting time schedule is contingent upon Father's providing a urine sample through TASC by noon on March 27, 2009, and for 11 consecutive weeks thereafter, on a random basis, at Father's sole cost and expense. Father has represented that he has been taking an opiate-based pain reliever and that, more likely than not, the test, if done on the 27<sup>th</sup> of March will reveal the presence of an opiate-based derivative. Father has an obligation through his counsel to provide Mother's counsel a copy of his current prescription for this medication. In addition, Father shall provide proof of a current prescription for any future positive tests for an opiate-based derivative. Any positive test result for which Father provides proof of a valid prescription shall constitute a negative test. *However, other than that exception, any missed or diluted test, or any test result that is positive for any of the drugs on screen A (including alcohol) shall be considered a positive result, and in that event, Father's parenting time shall automatically, by operation of law, revert to the parenting time order entered by the Maricopa County Superior Court on or about March 27, 2008, and Father's parenting time shall remain in that manner unless otherwise agreed to by the parties or until further order of the Court.* (Decree of Dissolution of Marriage, *Collins v. Collins*, FC 2008-090358, dated May 7, 2009, at p. 10. Emphasis added.)

Although Father contends that testing for alcohol was not originally contemplated by the parties when discussing the terms of the decree of dissolution, the above cited portion of the parties' decree clearly indicates that if Father tests positive for alcohol during the eleven (11) week period, his parenting time would revert to the parenting time ordered in the Court's March 27, 2008 minute entry. Father's assertion that the Court should disregard the plain language of the decree relating to the prohibition of Father consuming alcohol must be rejected. The parties' decree of dissolution was filed on May 7, 2009 and since that date Father has been on notice that the proposed parenting time schedule as set forth in the decree of dissolution was contingent on him producing eleven (11) consecutive urine samples that did not contain any of the drugs on screen A *including alcohol*. Father has not filed a motion to amend or strike the alcohol prohibition from the decree of dissolution.

At the hearing, Father testified that he has been unable to provide the required number of negative drug/alcohol tests as outlined in the parties' decree of dissolution. Therefore, based on the testimony and evidence presented at the hearing,

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**IT IS ORDERED** denying Father's amended petition to modify parenting time.

**IT IS FURTHER ORDERED** that because Father has not complied with the drug/alcohol screening terms as set forth in the parties' decree of dissolution, Father's parenting time shall revert to the parenting time ordered in the Court's March 27, 2008 minute entry. Father's parenting time schedule shall remain as set forth in the Court's March 27, 2008 order unless otherwise agreed to by the parties or until further order of the Court.

**CHILD SUPPORT**

Father also requested that the Court modify the current child support award. In the decree of dissolution, the parties' agreed that Father would pay Mother \$1,600.00 per month in child support. At the hearing, Father testified that his income has been reduced due to the recent economic conditions. Pursuant to A.R.S. § 25-327(A), child support can only be modified upon a showing of changed circumstances that are substantial and continuing. Father failed to present any credible evidence regarding his current income to support the necessary finding as set forth in A.R.S. § 25-327(A). Therefore,

**IT IS ORDERED** denying Father's request to modify child support.

**IT IS FURTHER ORDERED** denying Father's request that he pay the minor child's day care costs directly to the day care provider.

**DECISION MAKING AUTHORITY**

Father also requested that the Court modify the decree of dissolution that grants Mother final decision making authority over any and all major decisions regarding the minor child. At the hearing, Father failed to present any credible evidence to support his request to modify this portion of the decree of dissolution. Therefore,

**IT IS ORDERED** denying Father's request to divest Mother of final decision making authority over any and all major decisions regarding the minor child.

**ALCOHOL/DRUG TESTING FOR MOTHER AND FATHER**

On August 12, 2009, Father filed a motion to terminate TASC testing. On September 4, 2009, the Court denied Father's motion to terminate TASC testing. As previously stated, Father has failed to comply with the Court's TASC requirements as set forth in the parties' decree of

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dissolution. Father's parenting time schedule will not be modified until he complies with the TASC alcohol and drug requirements set forth in the parties' decree of dissolution. Therefore,

**IT IS ORDERED** denying Father's request that his TASC testing be terminated.

Additionally, Father failed to present any credible evidence to support his allegation that the Court should order Mother to undergo TASC alcohol and drug testing. Therefore,

**IT IS FURTHER ORDERED** denying Father's request that Mother undergo TASC alcohol and drug testing.

**ATTORNEY FEES**

At the conclusion of the hearing, the Court ordered Mother's counsel to submit an affidavit of attorney's fees. On December 18, 2009, Mother's counsel filed an affidavit of attorney's fees. On January 5, 2010, Father's counsel filed a motion to extend time to file objection to Mother's affidavit of attorney's fees. The Court granted Father's counsel's motion for an extension of time.

**IT IS ORDERED** taking the issue of attorney fees under advisement until the attorney fees issue is fully briefed.

**IT IS FURTHER ORDERED** signing this minute entry as a formal order of this Court pursuant to Rule 81, Arizona Rules of Family Law Procedure.

FILED: Exhibits Worksheet

DATED the 14<sup>th</sup> day of January, 2010

/S/ HONORABLE JAMES P. BEENE

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JAMES P. BEENE  
JUDGE OF THE SUPERIOR COURT

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.